

D15-01
Social Security Disability Income and UI Benefits

Date: March 19, 2015 (Updated)

Proposed by: DWD

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ANALYSIS OF PROPOSED UI LAW CHANGE
AMENDMENTS TO RECENTLY ENACTED SSDI PROVISION

1. Description of Proposed Change

Claimants were previously allowed to simultaneously collect Social Security Disability Insurance (SSDI) and UI benefits. This practice allows the claimant to collect benefits from two benefit programs designed to supplement lost earnings due to the claimant's inability to work. During the last agreed upon bill cycle, the Unemployment Insurance Advisory Council (Council) unanimously supported a Department proposal to address this issue.

2013 Wisconsin Act 36 created Wis. Stat. § 108.04 (12) (f) 1. which provides "[a]ny individual who actually receives social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week is ineligible for benefits paid or payable in that same week under this chapter." This statute was intended to provide that claimants who received SSDI during the month would not be eligible for UI benefits during that month.

The Labor and Industry Review Commission (LIRC) has issued a number of decisions that interpret the language of Wis. Stat. § 108.04 (12) (f) 1. to mean that a claimant is only ineligible for UI benefits during the week SSDI payment is received by the claimant. SSDI benefits are paid on a monthly basis, unlike UI benefits which are paid on a weekly basis.

The statutory interpretation applied by LIRC was not the intent of the Legislature, Department, or Council. At the February 20, 2014 UIAC meeting, the Council unanimously approved a resolution confirming the intent of this proposal. The resolution included a statement that "SSDI benefits are paid on a monthly basis. It was intended that claimants are not only ineligible in the week in which the SSDI check is delivered to the SSDI benefit recipient. It was intended that a SSDI payment would disqualify a claimant from unemployment insurance benefits in all weeks of the month."

The attached Legislative Reference Bureau draft amends the statutory language to reverse the statutory interpretation in the decisions issued by LIRC. This draft provides:

- A claimant is ineligible for UI benefits throughout the entire month in which the claimant is issued monthly SSDI benefits.
- The first time a claimant is issued a monthly SSDI benefit check, the claimant will be ineligible for UI benefits only for the prospective weeks in which the SSDI was paid and not necessarily the entire month. For example, if a claimant is issued their first monthly SSDI benefit check on May 21, 2015, the claimant would be ineligible for UI benefits the weeks of May 17-23 and May 24-30, 2015. UI benefit weeks start on Sunday. A claimant will become

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ineligible for UI benefits for the entire month in which a claimant is issued subsequent monthly SSDI benefit checks.

- Once a claimant receives their last monthly SSDI benefit check, the claimant will become eligible for UI benefits following the last full benefit week of that month. For example, a claimant receives their last monthly SSDI benefit check in June 2015. The first benefit week in which the claimant will be eligible for UI benefits is June 28 - July 4, 2015.

2. Proposed Statutory Language

Amend Wis. Stat. § 108.04(2)(h):

108.04 (2) (h) An individual shall, when the individual first files a claim for benefits under this chapter and during each subsequent week the individual files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance benefits under 42 USC ch. 7 subch. II. payments, as defined in sub. (12) (f) 1.

Amend Wis. Stat. § 108.04(12)(f)1.:

108.04(12)(f)1. ~~Any individual who actually receives social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week~~ Except as provided in subd. a. to c., an individual is ineligible for benefits paid or payable in that same week under this chapter for each week in the entire calendar month in which a social security disability insurance payment is issued to the individual. For purposes of this paragraph and sub. (2)(h), the term "social security disability insurance payment" means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

a. In the first month a social security disability insurance payment is first issued to an individual, the individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that calendar month.

b. Following a cessation of social security disability insurance payments to an individual and upon the individual again being issued a social security disability insurance payment, the

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individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that calendar month.

c. Following cessation of social security disability insurance payments, an individual may be eligible for benefits under this chapter, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final social security disability insurance payment.

Amend Wis. Stat. § 108.04(12)(f)2.:

108.04 (12) (f) 2. Information that the department receives or acquires from the federal social security administration ~~that an individual is receiving social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week~~ regarding the issuance of social security disability insurance payments is considered conclusive, absent clear and convincing evidence that the information was erroneous.

Create Wis. Stat. § 108.04(12)(f)2.:

108.04 (12) (f) 3. The intent of the legislature in enacting this paragraph is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

3. Proposer's Reason for the Change

To correct an unintended statutory interpretation contained in decisions issued by LIRC.

4. Effects of Proposed Changes

- a. Policy. This change provides a technical correction to clarify the intended purpose of the original proposal.
- b. Administrative Impact. The administrative impact of this proposal is minor.

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- c. Fiscal. The proposed law change is technical in nature, so no fiscal estimate is included. As part of the overall fiscal estimate contained in 2013 Wisconsin Act 36, it was estimated this proposal would increase the UI Trust Fund balance by \$2.3 million annually.

5. State and Federal Issues

The U.S. Department of Labor found no conformity issue with the current statute. The proposed amendment just clarifies the intent.

6. Proposed Effective/Applicability Date

This proposal should be effective with other changes made as part of the agreed bill cycle.